Third Ave. Ry. Co., 26 N. Y. S. 754; *Watkins* v. *Union Traction Co.*, 194 Pa. St. 564. But a mere error of judgment as to the distance or speed of the car, such as an ordinarily prudent person might make, will not necessarily preclude a recovery. *Lang* v. *Houston, &c., Ry. Co.*, 75 Hun. 151. *Contra*, see *Sutherland* v. *Cleveland, Etc., Ry. Co.*, 148 Ind. 308. (But this was the case of a steam train, which could not be stopped so readily as an electric car. Upon this difference the case is probably distinguishable.) Obviously, where the case is one of error of judgment, the question is for the jury. 2 THOMPSON, NEGLIGENCE [2nd ed.], § 1452. But it does not necessarily follow that the court should properly have left the question to the jury in the principal case. As in every instance of a fact question being taken from the jury, the query is whether reasonable men could arrive at different conclusions on the evidence adduced. So the difference between a mere error of judgment and an act of plain rashness and folly is one of degree rather than of kind. On authority the court was certainly justified in taking the question from the jury by *Hamilton* v. *Third Ave. Ry. Co., supra*, where the car was going but ten miles an hour and was forty feet away, and it was, nevertheless, held contributory negligence *per se* for the plaintiff to attempt to cross. The case of *Petri* v. *Third Ave. Ry. Co.*, 63 N. Y. S. 315, would carry the court even farther than it was necessary to go in this instance, but it seems that that case is not relied upon as law even in New York. Inasmuch as the "scintilla rule" prevails in New York, it is at least plausible that one of the bases of the dissent in the principal case, either conscious or otherwise, is an aversion, engendered of that rule, to taking any fact question from the jury if there is any relevant evidence on the point.

PAYMENT—ACCEPTANCE OF CHECK AS PAYMENT.—P rendered professional services for D for which D gave a check. P sued D for services rendered and D pleaded payment. *Held*, mere receipt of check subsequently dishonored is not effective as payment. *Feinberg* v. *Levine* (Mass., 1921), 129 N. E. 393.

By the great weight of authority, in the absence of special circumstances showing an actual intent the acceptance of a check will not be treated as payment. *Nat'l Bank of Commerce* v. *Chicago Ry.*, 44 Minn. 224, 9 L. R. A. 263; *Born* v. *First Nat. Bank*, 123 Ind. 78, 7 L. R. A. 442. Where an opposite view has been adopted (*Mehlberg* v. *Tisher*, 24 Wis. 607), it has usually been overruled by later cases. *Willow Lumber Co.* v. *Luger Furniture Co.*, 102 Wis. 636; *Gallagher* v. *Ruffing*, 118 Wis. 284. Even under the majority view the debt is suspended until the check is paid or dishonored. *Phoenix Ins. Co.* v. *Allen*, 11 Mich. 501. And under either view the rule is merely one of presumption which must yield to the actual intent of the parties. *Duncan* v. *Kimball*, 3 Wall (U. S.) 37.

QUO WARRANTO—GOVERNOR MAY SUE ONLY IN GENERAL PUBLIC INTERESTS.—Under a Mississippi statute providing that the governor "may bring any proper suit affecting the general public interests," it was *held* that the

power granted contemplated only suits affecting the general public welfare of the state as distinguished from local public interests, and that, therefore, the governor could not bring quo warranto proceedings to oust municipal officers. *Temple et al.* v. *State ex rel. Russell, Governor* (Miss., 1920), 86 So. 580.

The principal question involved in the instant case is the scope of the phrase "general public interests." The majority opinion is based on the theory that the interests of the state and the interests of a municipality within that state are separate and distinct. It is submitted that such a distinction is here unreasonably strict and narrow. As the dissenting opinion points out, the municipality is but part of the state, and what affects the smaller unit certainly affects the larger. A local unit is a creature of the state, made for the specific purpose of exercising within a limited sphere the powers of the state. It is the representative of the state and a portion of its governmental power. *United States* v. *Railway Co.*, 17 Wall. 329, 21 L. Ed. 597; *Philadelphia* v. *Fox*, 64 Pa. 180; *Daniel v. Memphis*, 11 Humph. (Tenn.) 582. Municipalities are mere agencies, auxiliaries, or instrumentalities of the state. WORDS AND PHRASES (Second Series), Vol. 3, p. 473; 1 DILLON, MUN. CORPS. [5th Ed.], Sec. 31. The administration of justice and the preservation of the public peace within the municipalities concern the state at large, although these powers are actually exercised within defined limits. *People* v. *Detroit*, 28 Mich. 228, 15 Am. Rep. 202. Thus it seems in the case at bar the "general public interests" were involved, and the governor should have been permitted to maintain the quo warranto proceedings.

SALES—IMPLIED WARRANTY OF THE PURITY OF WATER.—D, a municipal corporation, provided the water supply to its inhabitants for domestic and drinking purposes. The water contained typhoid germs and caused P and his children to become ill with the disease. *Held*, in the absence of a showing of negligence, D was not liable. Elkus and Pound, JJ., dissenting. *Canavan* v. *City of Mechanicsville* (N. Y., 1920), 128 N. E. 885.

It has been generally held that a sale of food direct to the consumer carries with it an implied warranty of its purity, regardless of whether the seller had superior means of knowledge or whether the buyer relied on the knowledge of the seller. *Chapman v. Roggenkamp*, 182 Ill. App. 117; *Ward* v. *Great Atlantic & Pacific Tea Co.*, 231 Mass. 90; *Rinaldi* v. *Mohican Co.*, 225 N. Y. 70. The majority of the court, however, refused to apply the rule in the principal case on the ground that practical considerations make inspection prohibitive. The cases where water companies have been held liable have been based upon the existence of negligence. *Hamilton* v. *Madison Water Co.*, 11 Me. 157; *Jones* v. *Water Co.*, 87 N. J. L. 106. In *Green* v. *Ashland Water Co.*, 101 Wis. 258, the court expressly refused to find an implied warranty of the purity of water furnished by a quasi-public corporation, but it also announced doctrines opposed to implied warranties of any food. See FARNHAM ON WATERS AND WATERCOURSES, p. 828.